

APPEAL NO. 031013
FILED JUNE 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 28, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of _____, extends to include the left shoulder and the low back in addition to the injury to the claimant's head and neck, and that the claimant has had disability from September 13, 2002, and continuing through the date of the CCH. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

Affirmed, as reformed herein.

The claimant sustained a compensable injury on _____, when she fell over backwards in her chair at work. The carrier accepted a head and neck injury. The disputed issue regarding the compensable injury was whether the claimant also injured her low back and left shoulder in the accident. Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence, the hearing officer's determination on the issue of the extent of the compensable injury is supported by the claimant's testimony and by some of the medical reports in evidence. We conclude that the hearing officer's determination that the claimant's compensable injury extends to include the left shoulder and the low back in addition to the injury to the claimant's head and neck is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Since we are affirming the hearing officer's determination that the claimant's compensable injury extends to her left shoulder and low back, we do not find merit in the carrier's contention that the claimant's disability is due to noncompensable injuries. We conclude that the hearing officer's determination that the claimant has had disability from September 13, 2002, through the date of the CCH is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

The carrier contends that the hearing officer erred in denying its motion to reopen the evidence after the CCH was concluded to consider the report of a designated doctor which placed the claimant at maximum medical improvement (MMI). We note that neither of the two copies of the request for appeal contain Exhibits A or B which are

mentioned in the request for appeal. Furthermore, neither MMI nor impairment rating were issues at the CCH. We conclude that the carrier has not shown that the hearing officer abused her discretion in denying a request to reopen the evidence.

The carrier contends that the hearing officer erred in making Finding of Fact No. 4 that no doctor has certified that the claimant attained MMI. Since MMI was not an issue at the CCH, we reform the hearing officer's decision to delete Finding of Fact No. 4.

As reformed herein, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge